

EXHIBIT 1

to

Notice of Removal

in re

Union Pacific Railroad Co. vs. Diamond Plastics Corporation

Case Number 3:23-cv-00110

STATE COURT SUMMONS/COMPLAINT

Case No. CV002335Z

Dept. No. 2

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

Union Pacific Railroad Company
Plaintiff,

vs.

Diamond Plastics Corporation
Defendant.

SUMMONS

TO THE DEFENDANT: YOU HAVE BEEN SUED. THE COURT MAY DECIDE AGAINST YOU WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND, IN WRITING, WITHIN TWENTY-ONE (21) DAYS. READ THE INFORMATION BELOW VERY CAREFULLY.

A civil complaint of petition has been filed by the Plaintiff against you for the relief as set forth in the document (see complaint or petition on file). When service is by publication, add a brief statement of the object of the action. (See Nevada Rules of Civil Procedure, Rule 4(b). The object of this action is: Breach of Contract.

1. If you intend to defend this lawsuit, you must do the following within twenty-one (21) days after service of this summons, exclusive of the day of service:

- a. File with the Clerk of Court, whose address is shown below, a **formal written answer** to the complaint or petition, along with the appropriate filing fees, in accordance with the rules of the Court, and :

b. Serve a copy of your answer upon the attorney or plaintiff whose address is shown below.

2. Unless you respond, a default will be entered upon application of the plaintiff and this Court may enter a judgment against you for the relief demanded in the complaint.

Dated this 10 day of Feb, 2023.


Issued on behalf of plaintiff, or plaintiff's attorney:

Name: Sarah Ferguson, Esq.

Address: 50 W. Liberty Street, Ste. 750
Reno, NV 89501

Phone Number: (775) 323-1601

Clerk of the Court:


Humboldt County Courthouse
50 W. 5th St. Room 207
Winnemucca, NV 89445

Case No.: CV0023352

Dept. No.: 2

FILED
2023 FEB 21 PM 3:15
DEPT. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF HUMBOLDT

UNION PACIFIC RAILROAD COMPANY, a
Delaware corporation,

Plaintiff,

vs.

DIAMOND PLASTICS CORPORATION, a
Delaware corporation, and DOES 1-10,
inclusive

Defendant.

AMENDED COMPLAINT

COMES NOW Plaintiff Union Pacific Railroad Company ("Union Pacific"), by and through its attorneys, and files this Complaint against Defendant Diamond Plastics Corporation ("Diamond Plastics," together with Union Pacific the "Parties").

PARTIES

1. Plaintiff Union Pacific Railroad Company is a Delaware corporation with its principal office located at 1400 Douglas Street, Omaha, Nebraska 68179.

2. Defendant Diamond Plastics Corporation is a Delaware corporation with its principal office located at 1212 Johnstown Road, Grand Island, Nebraska 68803.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over the Defendant in this matter as Diamond Plastics has availed itself of the laws and protections of the State of Nevada by maintaining a facility in Golconda, Nevada, and being registered with the Secretary of State as a Foreign Corporation

1 authorized to conduct business in Nevada.

2 4. Venue is proper in the Sixth Judicial District pursuant to NRS 14.010 because
3 Diamond Plastics' obligations under the Parties' contract arise in this county.

4 UNDERLYING FACTS

5 5. Union Pacific and Diamond Plastics entered into Industry Track Contract (the
6 "ITC"), Audit No. 174031, on September 30, 1994, for the "construction, maintenance and
7 operation" of Track (as defined therein) at Diamond Plastics' facility in Golconda, Humboldt
8 County, Nevada (the "Facility").¹

9 6. The ITC set forth the terms and conditions of Union Pacific's construction,
10 maintenance, and operation of the Track, as well as Diamond Plastic's use of the Track.

11 7. The ITC states in part: "[Union Pacific] shall operate the Track subject to any
12 applicable tariffs or rail transportation contracts and the terms of this Agreement...." ITC, Exhibit
13 B, Section 2(a).

14 8. As well, the ITC provided that the Diamond Plastics would pay its bills within 30
15 days of receipt of all invoices or else be subject to all applicable interest. *See id.* at Section 6(a).

16 9. At all times relevant, Tariff UP 6004 ("UP 6004") was Union Pacific's applicable
17 Accessorial Services – Rules and Charges tariff. *See* UP 6004, *available at*
18 <https://www.up.com/customers/all/terms/index.htm>. UP 6004 was incorporated by reference into
19 the Parties' ITC.

20 10. Union Pacific's Demurrage Rules and Charges and Switching Rules and Charges
21 are set forth UP 6004.

22 FIRST CAUSE OF ACTION

23 (Breach of Contract)

24 11. The Parties' ITC is a valid and enforceable agreement. Under its plain terms,
25 Diamond Plastics was contractually obligated to pay all demurrage and switching charges incurred
26

27 ¹ Because the Industry Track Contract is subject to a non-disclosure clause, Union Pacific is
28 not attaching it as an exhibit to this Complaint. A copy may be provided to the Court for its *in*
camera review upon request.

per the terms of the ITC and UP 6004, incorporated therein by reference.

12. Between January 2019 and the present, pursuant to UP 6004, Diamond Plastics incurred \$329,000.00 in demurrage charges at its Facility. Demurrage charges attached hereto as **Exhibit A.**

13. Between May 2019 and October 2020, Diamond Plastics incurred \$6,920.00 in switching charges at its Facility. *See id.*

14. Union Pacific presented Diamond Plastics with invoices for the demurrage and switching charges incurred at the Facility and requested payment accordingly.

15. In breach of the ITC, Diamond Plastics has failed and refused to pay the invoices.

16. Diamond Plastic's refusal has resulted in damages to Union Pacific in the amount of \$336,520.00.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

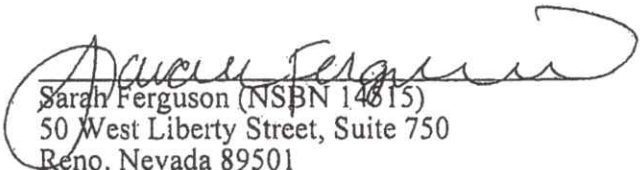
1. Union Pacific demands that judgment be entered in favor of Union Pacific and against Defendant in the amount of \$336,520.00, plus interest;
2. Attorneys' fees and costs; and
3. Any further relief the Court deems just.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the personal information of any person as defined in NRS 603A.040.

Dated this 16th day of February, 2023.

PARSONS BEHLE & LATIMER


 Sarah Ferguson (NSBN 14815)
 50 West Liberty Street, Suite 750
 Reno, Nevada 89501
 Telephone: 775.323.1601
 Email: sferguson@parsonsbehle.com

*Attorney for Plaintiff
 Union Pacific Railroad Company*

PAR NBR	PAR NAME	ACCT NBR	BILL RCN NAME	LOCATION	INVOICE	INVOICE DATE	ACTIVITY MONTH	BILL TYPE	BILLED AMT	PYMT AMT	OPEN AMT
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	298662865	2/8/2019	Jan-19	C E S	\$6,200	\$0	\$6,200
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	299183924	3/8/2019	Feb-19	C E S	\$7,000	\$0	\$7,000
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	300934978	6/7/2019	May-19	C E S	\$2,500	\$0	\$2,500
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	302612068	9/9/2019	Aug-19	C E S	\$23,600	\$0	\$23,600
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	303118070	10/7/2019	Sep-19	C E S	\$16,500	\$0	\$16,500
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	303704037	11/8/2019	Oct-19	C E S	\$6,400	\$0	\$6,400
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	304189269	12/6/2019	Nov-19	C E S	\$1,800	\$0	\$1,800
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	305259384	2/10/2020	Jan-20	C E S	\$2,600	\$0	\$2,600
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	306662782	5/8/2020	Apr-20	C E S	\$6,400	\$0	\$6,400
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	307062059	6/5/2020	May-20	C E S	\$24,100	\$0	\$24,100
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	308139435	8/7/2020	Jul-20	C E S	\$4,800	\$0	\$4,800
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	308740600	9/9/2020	Aug-20	C E S	\$28,700	\$0	\$28,700
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	309333466	10/9/2020	Sep-20	C E S	\$21,200	\$0	\$21,200
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	310460149	12/8/2020	Nov-20	C E S	\$15,300	\$0	\$15,300
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	311027557	1/11/2021	Dec-20	C E S	\$22,600	\$0	\$22,600
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	311595362	2/9/2021	Jan-21	C E S	\$22,900	\$0	\$22,900
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	313271578	5/10/2021	Apr-21	C E S	\$1,800	\$0	\$1,800
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	314425281	7/9/2021	Jun-21	C E S	\$5,200	\$0	\$5,200
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	314983134	8/9/2021	Jul-21	C E S	\$10,100	\$0	\$10,100
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	315548947	9/9/2021	Aug-21	C E S	\$11,400	\$0	\$11,400
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	317168612	12/9/2021	Nov-21	C E S	\$2,700	\$0	\$2,700
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	317653814	1/10/2022	Dec-21	C E S	\$5,800	\$0	\$5,800
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	318173755	2/8/2022	Jan-22	C E S	\$25,200	\$0	\$25,200
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	318692913	3/8/2022	Feb-22	C E S	\$1,300	\$0	\$1,300
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	320950105	7/8/2022	Jun-22	C E S	\$14,600	\$0	\$14,600
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	323269249	11/8/2022	Oct-22	C E S	\$24,100	\$0	\$24,100
670777	DIAMONPLASTI	169305	DIAMOND PLASTICS	GOLCONDA NV	323802261	12/8/2022	Nov-22	C E S	\$14,800	\$0	\$14,800
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	300762738	5/30/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	300762876	5/30/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371882	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371888	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371901	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371902	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371903	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371904	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371917	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371953	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371954	8/26/2019		SWITCH	\$180	\$0	\$180
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	302371955	8/26/2019		SWITCH	\$180	\$0	\$180
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670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	308506456	8/27/2020		SWITCH	\$200	\$0	\$200
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	308756783	9/10/2020		SWITCH	\$200	\$0	\$200
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	309121225	9/29/2020		SWITCH	\$200	\$0	\$200
670777	DIAMONPLASTI	154955	DIAMOND PLASTICS	GOLCONDA NV	309661370	10/27/2020		SWITCH	\$200	\$0	\$200
											\$336,520

EXHIBIT
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